

JAN 21 1998

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NO: 97-02320 (Case 2)

COUNSEL: [REDACTED]

HEARING DESIRED: NO

Applicant requests that an Article 15, imposed on 17 June 1983, be removed from his master personnel record. Applicant's submission is at Exhibit A.

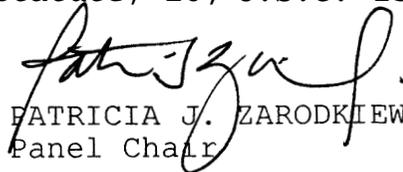
The appropriate Air Force office evaluated applicant's request and provided an advisory opinion to the Board recommending the application be denied (Exhibit C). The advisory opinion was forwarded to the applicant/counsel for review and response (Exhibit D). As of this date, no response has been received by this office.

After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinion appear to be based on the evidence of record and have not been rebutted by applicant or counsel. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board Ms. Patricia J. Zarodkiewicz, Mr. Edward H. Parker, and Mr. Patrick R. Wheeler considered this application on 15 January 1998 in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.


PATRICIA J. ZARODKIEWICZ
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinion
- D. SAF/MIBR Ltr Forwarding Advisory Opinion



DEPARTMENT OF THE AIR FORCE
AIR FORCE LEGAL SERVICES AGENCY (AFLSA)

2 September 1997

MEMORANDUM FOR AFBCMR

FROM: AFLSNJAJM (Capt Murad)
112 Luke Avenue, Room 343
Bolling Air Force Base, DC 20332-8000

SUBJECT: Correction of Military Records of [REDACTED]

Applicant's Request: In an application dated 30 July 1997, the applicant requests that an Article 15 imposed 17 June 1983 be removed from his master record, maintained by AFMPC. The applicant states that he believed all locally maintained records pertaining to the Article 15 had been purged four years after imposition of the Article 15, and that he did not become aware of the existence of another copy of the Article 15 until he began reviewing his master record in connection with his application for retirement.

The applicant is on active **duty**. His application is, therefore, timely, **as** the three-year limitations period provided for by 10 U.S.C. § 1552(b) **has** not yet begun to run. *See Detweiler v. Penu*, 38 F.3d 591 (D.C. Cir. 1994), which holds that § 205 of the Soldiers and Sailors Civil Relief Act of 1940, 50 U.S.C.App. § 525 tolls the limitations period for filing BCMR applications while an applicant is on active duty.

Facts of military justice action: The applicant received notice on 18 April 1983 that his commander intended to impose nonjudicial punishment under Article 15 of the UCMJ for driving a motor vehicle in Germany on 2 March 1983 while under the influence of alcohol, and for leaving the scene of an accident then without making his identity known. After the applicant waived his right to demand a court-martial, the commander imposed punishment, consisting of forfeitures, arrest in quarters, and a reprimand.

Applicant's contentions: The applicant contends that it is unjust to mar what is now a twenty-eight year record of service to the Air Force **with** information about something that happened fourteen years ago.

Discussion: The original copies of records of punishment imposed under Article 15 of the UCMJ and kept at AFMPC are to be destroyed thirty years after final review. AFMAN 37-139, Table 51-3, Rule 25. Thus, paperwork relating to **his** Article 15 is properly in his master record. The applicant does not indicate that his situation is unique, and that such uniqueness provides justification for managing his records differently from those of everyone else. Moreover, removing the Article 15 paperwork from his file would be tantamount to

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misrepresenting the applicant's twenty-eight year record as a perfect, by deleting the one item he considers negative while retaining all positive items, whether or not they are older than the Article 15. The applicant does not explain how such dishonesty would serve the interests of justice.

Recommendation: After review of the available records, I conclude there are no legal errors requiring corrective action and granting the applicant's request is not warranted. The applicant's master record properly contains records of his Article 15. I recommend, therefore, that the applicant's request be denied.



LOREN PERLSTEIN
Associate Chief, Military Justice Division
Air Force Legal Services Agency

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TABLE 51-3

Continued.

	A	B	C	D	
R U L E	if the records are or pertain to	consisting of	which are	then	
			upon which GCM action was completed after 30 June 1974		
16	court-martial jurisdiction	records accumulated incident to the granting and exercise of general, special and summary court-martial jurisdiction (See Note 4)		retire as permanent (See Notes 5 and 8). AUTH: NC 1-AFU-77-20	
17		card records reflecting active and inactive general court-martial jurisdiction of various commands		destroy when no longer needed. AUTH: N1-AW-90-3	
18	court-martial and Article 15 activities reports (requirement eliminated following report for 1st Qtr of CY 1975)	consolidated annual reports prepared by AFLSNJAJM from quarterly reports received from major commands	at AFLSA/JAJM	retire as permanent (See Note 8). AUTH: NC 1-AFU-77-20	
19			at other than AFLSA/JAJM	destroy after 3 years, or when no longer needed for reference, whichever is later. AUTH: N1-AFU-90-3	
20			individual and consolidated quarterly reports prepared by major command and subordinate court-martial jurisdictions	at AFLSNJAJM	destroy after 5 years or when no longer needed whichever is later. AUTH: N1-AFU-90-3
21				at other than AFLSNJAJM	destroy after 3 years or when no longer needed whichever is later. AUTH: N1-AFU-90-3
22	writ of habeas corpus	the complaint, the answer filed by the Government, copy of court decision, correspondence with US Attorney, and other related matters accumulated as the result of a complaint by the person released on a writ of habeas corpus	at AFLSNJAJM, and the person has been court-martialed	they become part of the original record of trial. AUTH: N1-AFU-90-3	
23			at AFLSNJAJM, and the person was not tried by court-martial	hold for 5 years after case is closed; retire to WNRC; destroy after 15 additional years. AUTH: N1-AFU-90-3	
24			at other than AFLSNJAJM	destroy after 2 years. AUTH: N1-AFU-90-3	
25	records of punishment imposed under Article 15, UCMJ	forms, correspondence, and summarized records of oral punishment, including separate appeals and actions that suspend, mitigate, remit, or set aside punishment	originals at HQ USAF or AFMPC	destroy 30 years after final review. AUTH: N1-AFU-90-3	

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